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REPORT

OF THE

ATTORNEY-GENERAL

TO THE

GOVERNOR,

FOR THE YEARS 1877 AND 1878.

LINCOLN, NEB.:
JOURNAL COMPANY, STATE PRINTERS,
1879.

REPORT OF ATTORNEY-GENERAL.

STATE OF NEBRASKA,
ATTORNEY GENERAL'S OFFICE,
LINCOLN, NEBRASKA, Dec. 15, 1878.

SIR: In conformity to the requirements of section 22, article V. of the constitution, I have the honor to submit the following report:

Schedule "A", hereto annexed, contains a list of criminal cases which in the last two years have been submitted to the Supreme Court upon brief and argument. The schedule shows the nature of each case, and the manner in which it has been disposed of.

During the last two years seventeen criminal cases have been brought to the Supreme Court, nine of which have been affirmed; five have been reversed, and three are now pending. More criminal cases have been affirmed in the last two years than have been in all the previous years of the State and Territory.

I recommend the passage of an act by the provisions of which it shall be made the duty of the District Attorneys of the State to assist the Attorney General in the preparation of criminal cases from their respective districts in the Supreme Court whenever he may deem it proper or necessary to invoke their assistance.

Crime, whether from the extreme difficulty of conviction, or from the reckless character of many of those who have flocked from other States to our sparsely settled frontier, is largely on the increase.

Within the last month the whole country has been shocked by the enormity and barbarity of the murders committed within our limits. Human life has become of little value, and the time has come in the history of the State when these violations of the law, at whose bare recital humanity shudders, must be put down with the whole power of the commonwealth. A State that is stretching out its arms inviting immigration must be able to offer perfect security for life and property. Desperadoes from Texas and other

places have sought to engraft their code of lawlessness upon the people of our frontier, and it is full high time that the Legislature should make adequate provisions for the prompt arrest, conviction and punishment of those who violate the law.

Take, as an illustration, the recent horrible crime committed in Custer county. The arrest, trial and conviction of the guilty parties will involve the outlay of large sums of money, in the subpœnaing of witnesses from distant parts of the State, the increased expense contingent upon the safe keeping of a large number of prisoners, their maintenance, and many other legitimate and necessary expenses not necessarily to here detail.

Indeed, it is a question of grave doubt whether the counties of the State ought to be compelled to bear all the large outlay necessary in this class of cases to maintain the supremacy of law.

The people of the whole State are alike interested in the punishment of criminals, and there is no good reason why the treasury of the State should not bear the expense necessary to maintain law security of life, and the enjoyment of the rights of property throughout the length and breadth of the State. I recommend the appropriation of moneys sufficient in amount to meet the needs of this class of cases, to be disbursed under the direction and supervision of the Judge of the District Court, and to be used in the payment of all expenses necessarily incurred in the arrest, trial and conviction of criminals in the unorganized and sparsely settled regions of our now almost defenceless frontier.

Schedule "B" contains a list of cases in which the State has been interested as party plaintiff or defendant in the District Courts of the State, with the disposition, if any made, in each case.

The memoranda connected with each case will generally give sufficient information. Some of the cases it may be proper to notice more fully. An act approved February 14, 1877, providing in what courts the State may sue and be sued, was promptly taken advantage of by those who were unable to have their claims passed upon by the Legislature. The 4th section of said act provides "that the court in which such action may be brought shall hear and determine the matter upon the testimony according to justice and right, as upon the amicable settlement of a controversy, and shall render award and judgment against the claimant or the State as upon the testimony right and justice may require." Many of the

cases from Lancaster county were for supplies furnished to the various State Institutions before the present Board of Public Lands and Buildings assumed charge of them, and after the appropriations made by the Legislature for their maintenance had been exhausted. These supplies were purchased upon the credit of the State by the properly designated purchasing officers; were certified to by them as necessary; were approved by the officers designated by law to approve them, and were endorsed by the Auditor as not paid for want of funds. Other cases were for services rendered to the State at the request of heads of department; and still another class were for claims arising out of contracts.

Believing, from a careful and critical examination of the act above referred to, that its entire aim and purpose was to have judicial interpretation and conclusion upon matters of fact and law upon these claims as a matter of information for the Legislature, it being universally admitted then, as now, that no warrant could be drawn upon the treasury for their payment until the whole matter had been passed upon by the Legislature and an appropriation made therefor in each case, and that the duty of the law officer of the State was fully performed by compelling the plaintiffs to prove their claims. Some of these cases were taken to the Supreme Court and there reversed, upon the ground "that the District Court can acquire jurisdiction in actions on claims against the State only by appeal from the decision of the Auditor of Public Accounts and Secretary of State."

All cases brought against the State followed the rule laid down in the case above quoted, and were dismissable at cost of plaintiff. It is proper for me to say that many of the cases brought were based upon meritorious claims against the State, and the Legislature ought to make provision for their payment.

Under the provisions of an act "to provide for the foreclosure and collection of the securities held by the Permanent School Fund," approved February 15, 1877, and by the direction of the State Treasurer, suits in foreclosure have been instituted in the various District Courts of the State.

Suits have also been commenced against Albertson, late Treasurer of Colfax, and bondsmen, and judgment obtained in the District Court for $2,210. Also, against Hobbs, late Treasurer of Cass

county, and bondsmen. The action is still pending in District Court for Cass county.

The passage of the various acts referred to has entailed a large amount of labor upon this office, and has compelled the employment of additional counsel, especially in counties remote from the seat of government, and it would be proper that provision should be made for their payment.

An appropriation of moneys ought also to be made to be expended by the Attorney General, subject to the approval of the Governor, to defray the expenses necessarily incurred in the commencement and preparation of suits by the State.

This office has been perpetually harassed by letters from private persons and municipal officers asking opinions upon every imaginable question of private right and public duty. Hundreds of these letters have heretofore been answered, until, unable to keep pace with the increasing demand for gratuitous advice, I have very reluctantly been obliged to refer one class of individuals to some good attorney of the vicinity, and municipal officers to their legally constituted adviser—the District Attorney of their respective district.

I am, very respectfully,

GEO. H. ROBERTS,
Attorney-General

THE GOVERNOR.

SCHEDULE A.

No. 1.

State
v.
Palmer Way.

Error to Lancaster, under sections 483, 515, and 516 of the criminal code.

Prosecution for adultery. Judgment of the district court overruled.

No. 2.

Michael Fillion
v.
State.

Error to Lincoln.

Indictment for murder. Judgment affirmed. Motion for rehearing in this case was also denied.

No. 3.

Wm. M. Preuit
v.
The People.
} Error to Thayer.

Indictment for murder. Reversed.

No. 4.

Richard D. Curry
v.
State.
} Error to Douglas.

Indictment for assault with intent to murder. Affirmed.

No. 5.

Grant Thompson
v.
State.
} Error to Douglas.

Indictment for grand larceny. Judgment affirmed.

No. 6.

Howard T. Marshall
v.
State.
} Error to Hall.

Indictment for forgery. Judgment affirmed.

No. 7.

Minor Milton
v.
State.
} Error to Washington.

Indictment for murder. Reversed.

No. 8.

Wm. Bays
v.
State.
} Error to Lancaster.

Willful disturbance of school. Reversed.

No. 9.

Wm. H. Garrison
v.
The People.
} Error to Douglas.

Indictment for assault with intent to commit rape. Affirmed.

No. 10.

John Williams
v.
State.
} Error to Buffalo.

Indictment for murder. Reversed.

No. 11.

Dan'l G. Geiger
v.
State.
} Error to Buffalo.

Indictment for grand larceny. Affirmed.

No. 12.

Warren Clough
v.
State.
} Error to York.

Indictment for murder. Affirmed. Motion for rehearing denied.

No. 13.

Thomas White
v.
State.
} Error to Douglas.

Indictment for rape. Stricken from docket.

No. 14.

Mary D. Walrath
v.
State.
} Error to Cheyenne.

Indictment for murder. Reversed.

No. 15.

Geo. J. St. Louis
v.
State.
} Error to Saunders.

Indictment for murder. Case pending.

No. 16.

John Kountze
v.
State.
} Error to Richardson.

Indictment for murder. Case pending.

No. 17.

James R. Gandy
v.
State.
} Error to Clay.

Indictment for assault with intent to murder. Case pending.

SCHEDULE B.

State of Nebraska
v.
Sioux City & Pacific R. R. Co. et al.
} Appeal from Dodge.

Judgment for State in district court. Judgment reversed and case dismissed in supreme court.

W. H. B. Stout
v.
State.
} District Court for Lancaster Co.

Judgment against defendant for $34,695.23 in district court. Reversed and dismissed in supreme court. Lamb, Billingsley & Lambertson of counsel.

State ex rel Omaha Nat. Bank
v.
Treasurer.
} Original suit, supreme court.

Application for mandamus to compel State Treasurer to pay relators $2176.35. Peremptory writ awarded.

E. Eastabrook
v.
State. } District court for Douglas Co.

Dismissed. J. L. Webster of counsel.

I. Wiley et al
v.
State. } District court, Lancaster Co.

Dismissed by plaintiffs without prejudice.

Lancaster Co. Bank
v.
State. } District court, Lancaster Co.

Judgment against State for $5,070 in district court. Reversed and dismissed in supreme court.

Geo. L. Brown
v.
State. } District court, Lancaster Co.

Dismissed.

Joseph Ward
v.
State. } District court, Lancaster Co.

Dismissed by plaintiff without prejudice.

R. H. Bradford et al.
v.
State. } District court, Lancaster Co.

Dismissed.

J. R. Webster et al.
v.
State. } District court, Lancaster Co.

Dismissed by plaintiff without prejudice.

C. M. Parker et al.
v.
State. } District court, Lancaster Co.

Dismissed.

Lewis Franklin
v.
State. } District Court, Lancaster Co.

Judgment for plaintiff, District Court, for $152.55.

Thomas Price
v.
State. } District Court, Lancaster Co.

Dismissed.

Owen & Oakley
v.
State. } District Court, Lancaster Co.

Dismissed.

John McAllister
v.
State. } District Court, Lancaster Co.

Dismissed.

O. L. Bridges
v.
State. } District Court, Lancaster Co.

Judgment, District Court, for plaintiff, $136.70.

C. Brewster
v.
State. } District Court, Lancaster Co.

Judgment District Court, $253.00.

L. N. White
v.
State. } District Court, Butler Co.

Dismissed. Millett & Son, of counsel.

P. O'Hawes
v.
State. } District Court, Lancaster Co.

Dismissed by plaintiff without prejudice.

State ex. rel. Stout
v.
Board Pub. Lands and Build'gs. } District Court, Lancaster Co.

Application for mandamus. Withdrawn.

Lancaster Co. Bank
v.
State. } District Court, Lancaster Co.

Dismissed.

Meyer & Co.
v.
State. } District Court, Lancaster Co.

Judgment in District Court for $602.68.

State ex rel. J. H. Ames
v.
Governor. } Supreme Court.

Application for mandamus to compel Governor to approve voucher for relator as member of the code commission. Writ refused.

State ex rel. Carter
v.
Board Pub. Lands and Build'gs. } Supreme Court.

Application for mandamus to compel Board of Public Lands and buildings to revoke order dismissing relator as physician to penitentiary. Writ denied.

Nebraska City Bank
v.
State. } District Court, Otoe Co.

Dismissed. S. H. Calhoun of counsel

Conn. River Bank
v.
State. } District Court, Otoe Co.

Dismissed. S. H. Calhoun of counsel.

Mills
v.
Chapin et State. } U. S. Circuit Court.

Answer filed. Case pending. J. L. Webster of counsel.

State
v.
Hobbs, Laws, Cass Co. } District Court, Cass Co.

Stands for trial. J. L. Webster of counsel.

State
v.
Jenkins et al. } District Court, Jefferson Co.

Foreclosure mortgage permanent school fund. Amount debt, $3,420.67. Sale of mortgaged property, bid in by State, and personal judgment against defendant for $3,017.67. Dean deceased.

Forbes & Colby of counsel.

State
v.
Coggswell et al. } District Court, Nemaha Co.

Foreclosure mortgage permanent school fund. Sale set aside. New appraisement ordered. J. H. Broady of counsel.